

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,		*
	Plaintiff,	*
	-v- 11-cr-228	*
IANI S. TASSEV,		*
	Defendant.	*

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GARY L. SHARPE
May 12, 2011
445 Broadway, Albany, New York

FOR THE GOVERNMENT:

OFFICE OF THE UNITED STATES ATTORNEY
445 Broadway
Albany, New York 12207
By: Daniel Hanlon, AUSA

FOR THE DEFENDANT:

GASPAR M. CASTILLO, ESQ.
817 Madison Avenue
Albany, New York 12208

1 COURT CLERK: The date is Thursday, May 12th,
2 2011, at 10:00 A.M., in the matter of the United States
3 of America versus Iani S. Tassev, case 11-cr-228. We are
4 here for a waiver and plea hearing. Appearances for the
5 record, please.

6 MR. HANLON: Daniel Hanlon on behalf of the
7 United States. Good morning, your Honor.

8 THE COURT: Good morning.

9 MR. CASTILLO: Good morning, Judge. Gaspar
10 Castillo for Iani Tassev, who is seated to my left.

11 THE COURT: Good morning. All right. As I
12 understand it, pursuant to the terms of a plea agreement
13 and court exhibit, it's Mr. Tassev's intention to waive
14 indictment and enter a plea to Information 1:11-cr-228,
15 charging him in the first count with conspiracy to
16 possess with intent to distribute and distribution of
17 marijuana, in the second count with a conspiracy to
18 launder monetary instruments and to admit the forfeiture
19 allegation that's contained in the indictment. Am I
20 correct, Mr. Castillo?

21 MR. CASTILLO: Yes, your Honor.

22 THE COURT: All right. Mr. Tassev, in order
23 for me to allow you to do these things, I need to be
24 satisfied that you understand the consequences of doing
25 them, I need to be satisfied that it's your free choice

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 UNITED STATES DISTRICT COURT - NDNY

1 to do them, and insofar as the plea is concerned, I need
2 to be satisfied that there are facts that would support
3 your admission of guilt to the two counts that are
4 contained in the indictment. Do you understand?

5 THE DEFENDANT: I understand, your Honor.

6 THE COURT: All right. You may remain seated.
7 In order for me to be satisfied of those things, you and
8 I need to talk, the conversation is under oath and,
9 subject to the penalties of perjury, you're obligated to
10 tell me the truth to the questions I ask.

11 Mr. Law, would you administer an oath please.

12 (Whereupon, defendant placed under oath)

13 THE COURT: Mr. Castillo, Mr. Tassev is aware
14 of what I'm referring to as the Court exhibit?

15 MR. CASTILLO: Yes, your Honor.

16 THE COURT: All right. How old are you,
17 Mr. Tassev?

18 THE DEFENDANT: I'm 28.

19 THE COURT: You can stay seated; you don't have
20 to bop up like a jack-in-the-box.

21 What kind of education do you have?

22 THE DEFENDANT: Bachelor degree. Bard College.

23 THE COURT: I take it, then, hopefully, you can
24 read and write English?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. And you're represented
2 by Mr. Castillo and I take it you've discussed these
3 matters with him?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: We have a bunch of documents in
6 front of us; one is a plea agreement. Have you read
7 that?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: One we're referring to as a Court
10 exhibit, you have read that?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: And then, of course, we have the
13 Information. You read that?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Did you get a chance to discuss all
16 of those things with Mr. Castillo?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I'm sure as you did that, you had
19 questions. Were you able to ask him all of the questions
20 you wanted to?

21 THE DEFENDANT: Absolutely, your Honor.

22 THE COURT: Was he able to explain the things
23 that you asked him about in a way that you understood
24 them?

25 THE DEFENDANT: Yes, your Honor.

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UNITED STATES DISTRICT COURT - NDNY

1 THE COURT: All right. Any drugs or alcohol in
2 the last 24 hours?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you on any medication?

5 THE DEFENDANT: No.

6 THE COURT: If anything should arise in this
7 conversation that you don't understand, you stop me and
8 I'll back up and explain it in a way so that you do.

9 THE DEFENDANT: Okay.

10 THE COURT: I'm not going to go over each of
11 the details of either the Court exhibit or the plea
12 agreement. I'm only going to select those parts that
13 have to do with the three issues I said we needed to chat
14 about.

15 Let's take up the first one. It deals with the
16 information and the subject matter called a Waiver of
17 Indictment.

18 Do we have a waiver here, John?

19 COURT CLERK: Yes. It's been executed,
20 correct?

21 THE COURT: Under the Constitution of the
22 United States, which protects you, there is a provision
23 that says the government cannot bring a felony charge
24 against an individual unless they first present that
25 charge to a grand jury. That comes out of Old England

1 when the king used to hail people into court and they had
2 to answer charges whether there are any reasons for the
3 charges or not. That's the purpose of the provision.

4 So, in effect, a grand jury stands between the
5 government and the defendant. Its role is far different
6 than anything a trial jury does. Its role is to make
7 sure there is reason to believe that a crime has been
8 committed and that a particular defendant committed it.

9 So the test before a grand jury is one of
10 reasonable cause, not proof beyond a reasonable doubt,
11 which is something for a trial jury. If a grand jury
12 feels there is reasonable cause to believe that a crime
13 has been committed and that a person committed it, then
14 they return something called an indictment and that is
15 the instrument that forces a person to trial or plead.

16 Now, a grand jury consists of between 16 and 23
17 people, it's 23 but all 23 don't have to be present at
18 any session, 16 do for there to be a quorum, 12 of the 16
19 present have to agree to return the indictment.

20 So, in essence, you have a right to have these
21 charges submitted to a grand jury so that they can screen
22 them on the subject of probable cause. You're indicating
23 to me that you don't want to go through that process, you
24 would prefer to proceed on the basis of the Information
25 that's been filed; is that correct?

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UNITED STATES DISTRICT COURT - NDNY

1 THE DEFENDANT: Correct.

2 THE COURT: And for all practical purposes,
3 there's no difference between the Information and the
4 Indictment. The only difference is this piece of paper
5 would be called an Indictment instead of an Information
6 and in addition to the signature of a U.S. Attorney, it
7 would have the signature of a foreperson of the grand
8 jury.

9 Let's turn, then, to the other subject dealing
10 with the plea and the first is the consequence of the
11 plea, and the first consequence is again found in the
12 Constitution. Everybody who is charged with a felony has
13 a right to a jury trial if they wish. This subject is in
14 your plea agreement and I'm sure you've read it and
15 discussed it with Mr. Castillo.

16 If you elected a jury trial, we would bring a
17 group of people in, about 35 in number. From that number
18 we would pick 12 to sit as the trial jury. You,
19 Mr. Castillo, the government and I would all have some
20 say as to who those 12 were, then listen to the evidence
21 in the case, my legal instructions and at the end of the
22 case, they would have to be satisfied unanimously beyond
23 a reasonable doubt that you committed the crimes charged
24 here in order to convict you.

25 Now, again, under the Constitution, you're

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UNITED STATES DISTRICT COURT - NDNY

1 presumed innocent unless and until a jury returns a
2 verdict against you. That means at trial you would have
3 one of two choices to make: You could remain silent. In
4 the vernacular, I like to say I would let you kick back
5 and read the newspaper and you could put some duct tape
6 over Mr. Castillo's mouth and keep him quiet too if you
7 wanted to and it wouldn't change the fact that the
8 government would still have the burden of proving your
9 guilt beyond a reasonable doubt.

10 On the other hand, you could fully participate
11 in the trial. You could use my powers to subpoena
12 witnesses and evidence on your behalf, you could testify.
13 Certainly you would want Mr. Castillo to contest the
14 government's evidence, witnesses and evidence and to
15 cross-examine and contesting evidence. Again, regardless
16 of what choice you would make, it wouldn't alter the fact
17 that the government bears the burden of unanimously
18 proving your guilt beyond a reasonable doubt.

19 If I accept your plea here this morning,
20 there's not going to be any trial, you're giving that
21 right up you have under the Constitution. Do you
22 understand?

23 THE DEFENDANT: I understand that.

24 THE COURT: All right. Let's talk about the
25 second impact of a plea and that has to do with

1 sentencing. Now, in the federal system, I can't have any
2 conversations with anybody before a plea about what I
3 might do at the time of sentencing. So I have had no
4 conversations with Gaspar nor with the prosecutor about
5 what sentence I impose and, frankly, I don't know.

6 I can tell you what the process is. If I
7 accept your plea here today, I'm going to ask probation
8 to prepare a pre-sentence report. They're going to sit
9 down and chat with you, put that conversation in writing.
10 When they are done, you're going to see it, Mr. Castillo
11 is going to see it, government is going to see it, I'm
12 going to see it.

13 Before the day of sentencing, I'm going to know
14 what has happened as a result of the court exhibit, and
15 I'm not going to discuss that further, and then everybody
16 is going to get a chance to put anything in writing they
17 want to me, everybody is going to get a chance to speak
18 to me on the date of sentencing. Once I've read
19 everything, once I have listened to everybody, it is my
20 obligation to impose a sentence that I think is
21 reasonable and is consistent with any statutory
22 restrictions that Congress has imposed on me.

23 So, bottom line is, I don't know until the day
24 that sentencing comes what the sentence is going to be.
25 That doesn't mean, however, there aren't some things we

1 can say about the parameters of sentencing. Every crime
2 has different maximums and minimums associated with it
3 and that's what your plea agreement is telling you here.

4 So, in paragraph 2 with the focus on potential,
5 it's telling you what the possible maximum penalties are.
6 So as to Count One, the marijuana conspiracy, the maximum
7 term of imprisonment is life, there is a mandatory
8 minimum of ten years. That means Congress has told me I
9 must sentence you to ten years. That's what the court
10 exhibit is all about, however, untying my hands from that
11 Congressional mandate.

12 There's the possibility of supervised release
13 of five years to life. Supervised release is federal
14 jargon for what most people know as parole. If I were to
15 impose such a term, it would be under conditions. If you
16 violated those conditions, you could be returned to
17 prison. The maximum fine is \$10 million, and as to Count
18 Two, the maximum term of imprisonment is 20 years, the
19 period of supervised release is up to three years,
20 maximum fine is \$500,000 or twice the value of the funds
21 involved in the offense of conviction.

22 There are special assessments here that
23 Congress has elected to charge, a processing fee of a
24 hundred dollars per felony, so that's \$200, interest and
25 penalties. If I impose some financial obligations not

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UNITED STATES DISTRICT COURT - NDNY

1 paid right away, it's like a credit card, interest and
2 penalties accrue, and then collateral consequences.
3 Collateral consequences, meaning I'm not going to impose
4 any of those consequences as a sentence but there are
5 certain things that happen as a result of a felony
6 conviction, like the loss of the right to vote and the
7 loss of the right to bear firearms and then, of course,
8 you've got the forfeiture allegations.

9 MR. HANLON: Your Honor, I apologize. As
10 you're going through that, I just noticed that I
11 neglected to include the collateral consequences that
12 Mr. Tassev was a Bulgarian citizen and has alien status
13 here. There have been no promises made with regard to
14 that statute nor could there be. But I should point out
15 for the record that one possible consequence could be his
16 deportation.

17 THE COURT: Thank you for bringing that to my
18 attention. You understand that there could be
19 immigration consequences, too?

20 THE DEFENDANT: Yes.

21 THE COURT: Again, it's not anything that would
22 be over the federal district court judge, but there are
23 immigration laws and your conviction could result
24 in something having to do with your status. All right.

25 You understand those are all the possible

1 maximum consequences?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Let me talk to you, because it's
4 related to this, about a provision in the plea
5 agreement -- I'll find it; it's probably over around
6 paragraph 15. I was close, it's paragraph 16. It's
7 called "Waiver of Appeal and Collateral Attack". I've
8 got my own way of explaining that.

9 Even if you plead guilty, in the ordinary
10 course, once I sentence you, there are two ways you could
11 challenge your plea or any sentence I impose. One would
12 be to file a notice of appeal, an appellate court, a
13 bunch of judges that are higher up and smarter than me,
14 would review your plea and your sentencing.

15 Another way in which you could challenge those
16 two things is you file a motion with me within one year
17 of the sentence, it's called habeas corpus and, again,
18 you would challenge your plea or your sentence. Now, in
19 this paragraph you're agreeing in advance -- I told you I
20 don't know what sentence I'm going to impose and
21 I explained the process to you. But you're agreeing in
22 advance that when I do impose a sentence, if that
23 sentence is 188 months or less, you will not appeal or
24 later challenge either your plea or your sentence. Do
25 you understand that?

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

1 THE DEFENDANT: I do.

2 THE COURT: A little flip of that is this. If
3 for any reason I should impose a sentence of more than
4 188 months, you can appeal and later challenge your
5 sentence but not your plea. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Let me turn to the second area I
8 said we had to talk about; I call it free choice, the law
9 calls it the voluntariness of the plea. I can let you
10 waive indictment and I can let you plead guilty as long
11 as those two decisions are a product of your free choice.
12 If anybody has threatened you in order to get you to do
13 either of those two things or anybody has pressured you
14 in any way or made you some promise -- and I'm excluding
15 those that are in the Court exhibit and the plea
16 agreement -- that they should not have made, then I can't
17 let you do those things. Have any of those things
18 happened?

19 THE DEFENDANT: No.

20 THE COURT: Is it your free choice to waive
21 indictment?

22 THE DEFENDANT: Yes, it is.

23 THE COURT: Is it your free choice to plead
24 guilty?

25 THE DEFENDANT: Yes, it is.

1 THE COURT: Let me turn, then, to the last area
2 that I said I need to be satisfied that there are facts
3 that would support your plea to the two counts of the
4 Information. Now, in that regard, this plea agreement,
5 like all of those that are filed in criminal cases in
6 federal court, contains paragraph 5 which is recited as a
7 factual basis for the plea. I've read it, I have already
8 decided if those facts that are set out in paragraph 5
9 are true, they would support your plea to the
10 information.

11 Are those facts true?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You're admitting them to me?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Then as to the first count of the
16 indictment, charging you with narcotics conspiracy, how
17 do you plead? Guilty or not guilty? I didn't hear. As
18 to the first count of the indictment, charging you with
19 the narcotics conspiracy, how do you plead? Guilty or
20 not guilty?

21 THE DEFENDANT: I plead guilty.

22 THE COURT: And as to the second count,
23 charging you with a conspiracy to launder monetary
24 instruments, how do you plead?

25 THE DEFENDANT: I plead guilty.

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UNITED STATES DISTRICT COURT - NDNY

1 THE COURT: And as to the forfeiture
2 allegations, do you admit them?

3 THE DEFENDANT: I admit.

4 THE COURT: All right. As always, I've watched
5 Mr. Tassev as he and I have talked and I have no reason
6 to believe that he did not honor the oath that he took to
7 tell me the truth to the questions I asked. I'm
8 satisfied that he understands the consequences of waiving
9 indictment and pleading guilty. I'm satisfied it's his
10 free choice to do those things and I'm satisfied that the
11 facts set out in paragraph 5 support his plea to the
12 information as he has entered it.

13 I'll, therefore, accept the waiver and the plea
14 and we will set sentencing for when, Mr. Law?

15 COURT CLERK: Sentencing is scheduled for
16 September 8th, 2011, at 11 A.M.

17 THE COURT: Where are we at on bail?

18 MR. HANLON: Your Honor, Mr. Tassev is
19 currently detained without bail. This is a fairly
20 complicated set of circumstances. If I could clarify
21 this, some extent. In addition to these charges, Mr.
22 Tassev is also charged in the Eastern District of
23 New York facing penalties or facing charges down there as
24 well. He's detained down there as well.

25 I have had discussions with the Assistant

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UNITED STATES DISTRICT COURT - NDNY

1 United States Attorney from the Eastern District and if
2 it's acceptable to the Court, both in this district and
3 in the Eastern District, at least for this district's
4 purposes, there would be a joint proposal that the
5 defendant be released with a number of conditions in
6 light of the court exhibit. But given his status, as --
7 current alien and Bulgarian citizen, we would request
8 some significant conditions and those would be a bond in
9 the amount of \$1 million to be cosigned by two
10 financially secured individuals and to -- secured by
11 property.

12 I have discussed this with Mr. Castillo in the
13 amount of \$500,000. It's my understanding from my
14 discussions with the A.U.S.A. in the Eastern District
15 that they would go along with that same bail package once
16 Mr. Tassev is brought down there to answer those charges
17 if this Court is amenable to that.

18 So those are the conditions we would request,
19 your Honor. We would also request Mr. Tassev find a
20 residence within the Northern District of New York but
21 that he be permitted to travel within the Northern
22 District, Southern District and Eastern District of
23 New York, again, for purposes that relate to the court
24 exhibit.

25 THE COURT: How did he do in articulating your

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UNITED STATES DISTRICT COURT - NDNY

1 concurrence, Mr. Castillo?

2 MR. CASTILLO: I can tell the Court Mr. Hanlon
3 and I have had innumerable discussions about this and he
4 has set forth what he and I have discussed as late
5 as 6:30 last night I believe it was.

6 THE COURT: Where are we at in terms of
7 satisfying those conditions that you have articulated?
8 Namely, the posting of the bond and all of that? Has all
9 of that come?

10 MR. CASTILLO: Your Honor, I don't know if the
11 Court directly would address these issues in terms of
12 the procedural posting or if it would be referred to the
13 magistrate judge but my client's family is in the process
14 of gathering the documents, most of which I already have
15 today, and they will be available to do the actual
16 execution of documents probably tomorrow, if that's
17 something that can fit in the Court's schedule.

18 THE COURT: I'm going to refer that issue to
19 include -- in other words, I will agree to the bail
20 release under the circumstances as the parties agree and
21 I will also include in that any other general conditions
22 of release that are recommended by pretrial services. In
23 other words, standard conditions, Mr. Castillo?

24 MR. CASTILLO: Yes, your Honor.

25 THE COURT: That might be contained in the

1 order of release and then I'm going to refer the actual
2 release back to the magistrate judge, indicate to him I'm
3 receptive to the release under those conditions but let
4 the magistrate judge take care of the posting of the bail
5 and the setting of the other conditions in the release
6 order. I'm not sure I'm going to be available to do it.

7 Does that satisfy everybody?

8 MR. HANLON: Yes, Judge. Thank you.

9 MR. CASTILLO: Yes, your Honor.

10 THE COURT: All right. Now, let me say to you,
11 though, when it comes to bail, what's happened is you've
12 admitted the charges here. All that's left is sentencing
13 and the Court exhibit. You don't want to mess around
14 with the bail conditions that are set because that's
15 another thing, if there are any violations, I would take
16 into consideration at the time of sentencing.
17 Understood?

18 THE DEFENDANT: I understand.

19 THE COURT: All right. Anything further?

20 MR. HANLON: No, your Honor. Thank you.

21 THE COURT: All right. Thank you.

22 MR. CASTILLO: Thank you, Judge, for receiving
23 us today.

24 THE COURT: You're welcome.

25 (Whereupon, proceeding concluded)

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UNITED STATES DISTRICT COURT - NDNY

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5 C E R T I F I C A T I O N
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8 I, Lisa L. Tennyson, RMR, CSR, CRR, Official
9 Court Reporter in and for the United States District
10 Court for the Northern District of New York, hereby
11 certify that the foregoing pages taken by me to be a true
12 and complete computer-aided transcript to the best of my
13 ability.

14 *Lisa L. Tennyson*
15

16 _____
17 Lisa L. Tennyson, R.M.R., C.S.R., C.R.R.
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